State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMALGAMATED TRANSIT UNIT LOCAL 717	:	
Complainant	:	
v.	:	CASE NO. M-0596:14
MANCHESTER TRANSIT AUTHORITY	:	DECISION NO. 1999-054
Respondent	:	

APPEARANCES

Representing Amalgamated Transit Union, Local 717

Vincent Wenners, Esq.

Representing Manchester Transit Authority:

Mark Broth, Esq.

Also appearing:

Charlotte Sartell, Amalgamated Transit Authority
Robert Paradis, Amalgamated Transit Authority
John P. Webster, Sr., Manchester Transit Authority
John T. Mahoney, Amalgamated Transit Authority
Rita Davis, Amalgamated Transit Authority

BACKGROUND

The Amalgamated Transit Union, Local 717 ("Union") filed unfair labor practice (ULP) charges against the Manchester Transit Authority ("Authority") on February 9, 1999 alleging violations of RSA 273-A:5 I (a), (b), (c) and (h) after a member

was denied representation, after requesting it, during a meeting with the Superintendent of Transportation, John Webster. The Manchester Transit Authority filed an answer and motion to dismiss on February 24, 1999. This matter was then heard by the PELRB on May 13, 1999 after an intervening continuance sought by and granted to the parties.

FINDINGS OF FACT

1. The Manchester Transit Authority employs personnel to conduct its business of providing public transportation services and is a "public employer" within the meaning of RSA 273-A:1 X.

2. The Amalgamated Transit Union, Local 717, is the duly certified bargaining agent for all organized employees employed at and by the Authority.

3. The Authority and the Union are parties to a collective bargaining agreement (CBA) for the period July 1, 1997 through June 30, 2000. (Joint Exhibit No. 1.) Disciplinary procedures are set forth in Article III of that agreement and, unless there is cause to accelerate it, discipline is progressive in the form of verbal warnings, written warnings, suspension and discharge. During the course of the hearing, it became apparent that management also used "reminder" conferences with individuals to correct deficiencies. These "reminders" are not part of the formal disciplinary process but may be elevated to and become part of formal discipline if management feels that the requisite corrective or remedial actions have not been implemented by the employee.

4. On July 12, 1998, Charlotte Sartell wrote a letter to Donald Clay, General Manager of the Authority, complaining about a "verbal reminder" she had received from John Webster on July 9, 1998. Although this was not raised to the level of a "verbal warning," Sartell complained that Webster waited until 5:15 a.m. on July 9th to discuss her 6:33 a.m. bus run of the previous morning, July 8th, notwithstanding that she had been available from 3:30 p.m. until 4:25 p.m. for this discussion, during which time a union representative also would have been available.

During this "reminder," Sartell was told that she was to leave Elm and Wall Streets at 6:30 a.m., not 6:33 a.m. and that this was not discipline. (Union Exhibit No. 1.)

5. On August 4, 1998, the Manchester Board of Mayor and Aldermen reviewed minutes of an Authority meeting held on April 28, 1998 in conjunction with certain non-specific employee complaints which they had received, inclusive of Sartell's letter of July 12, 1998. (Union Exhibit Nos. 1 and 2, Authority Exhibit No. 1.) On August 5, 1998, Sartell was followed by Webster in an Authority vehicle for approximately two hours, notwithstanding that such checks, according to Sartell, are usually accomplished by the safety supervisor. When Sartell went to work at 5:45 a.m. on the morning of August 6, 1998, she was immediately directed to Webster's office by the dispatcher. Sartell said that when she went to Webster's office he said he wanted "to remind her about MTA policy" and that she should close the door and sit down. Sartell responded by asking for a union representative and testified that Webster responded by saying that, "If you don't close the door and sit down, discipline will be severe." This prompted Sartell to ask another driver, Robert Paradis, to bring a "Weingarten and You" poster into the office from the bulletin board. That poster described "Weingarten Rights" to have a union representative present during an investigatory interview. It also defined investigative interviews as "when (1) management questions an employee to obtain information and (2) the employee has a reasonable belief that discipline or other adverse consequences may result..." (Union Exhibit No. 3) The reminder session continued and concluded after Webster told Sartell, "If you value your job, you'll close the door" and she complied. On cross-examination, Sartell testified that Webster asked her no questions during this meeting.

6. The essence of the "reminder" meeting with Webster on August 6, 1998 involved her being prompt for a 6:15 a.m. departure point. Later that day, Sartell received a "written verbal warning" about events which occurred on her August 5, 1998 route runs, as allegedly

referenced on dispatcher incidents reports. It was signed by Webster and involved none of the subject matter contained in Sartell's and Webster's 5:45 a.m. meeting earlier that same day.

7. Robert Paradis, the driver who brought the poster to Webster's office, has been employed by the Authority for 21 years. On the morning of August 6, 1998, he heard Webster call to the dispatcher, in a very loud voice, "Get Charlotte in here" in a "forceful and intimidating" manner. Paradis also heard Webster tell Sartell, "Get in here and close the door, now!" After Paradis brought the Weingarten poster into Webster's office and gave it to Sartell, Sartell gave it to Webster who threw it out of his office, saying, "That means nothing down here; that means nothing in my office." Paradis also testified that the results of "reminder" sessions "most times" turned into formal discipline.

8. The Authority offered no witness to rebut the testimony of Union witnesses, as reported in Finding Nos. 5, 6 and 7.

DECISION AND ORDER

At the heart of this case is the PELRB's adoption of the principles set forth in NLRB V. Weingarten, 420 US 251, 43 L.Ed.2d 171, 95 S.Ct. 959 (1975). The PELRB's acceptance of those principles dates to Laconia Education Assn. v. Laconia School Board, Decision No. 1979-020 (August 23, 1979) and has been articulated in numerous decisions since then.

In I.B.P.O., Local 464 v. Nashua Police Commission, Decision No. 1985-074 (September 26, 1985), we said that the refusal of a superior to permit a unit employee "to have a representative of his choice accompany him in a disciplinary hearing is a violation of RSA 273-A:11 I (a) and therefore is an unfair labor practice." This was later refined in International Brotherhood of Police Officers, Local 394 v. City of Manchester, Decision No. 1993-073, (May 4, 1992) where we said that a "reasonable attempt must be made to contact and have available a union representative of the employee's choice if that representative is reasonably available,...[i.e.,] capable of presenting himself without unreasonably delaying the employer's administrative interview and

without impeding the employer's ability to fulfill its mandated governmental function, namely, the operation of a police department." This "mini trilogy" of police cases concluded with I.B.P.O., Local 580 v. Rochester Police Commission, Decision No. 1997-085 (October 24, 1997) where we held "contract interpretation, imposition of discipline and grievance adjustment are characteristic of such [protective] purposes and should be portected by access to appropriate and competent union representation."

In this case, the employer would have us dismiss the ULP because, purportedly, Webster neither asked any questions of Sartell nor imposed any discipline on her. We believe these to be erroneous distinctions. In Portsmouth Police Officers, I.B.P.O., Local 402 v. Portsmouth Police Commission, Decision No. 1997-017 (February 14, 1997), we summarized Weingarten rights as according "employees the right to union representation at an investigatory interview if they reasonably believe the investigation will result in disciplinary action," thus subscribing to the definition of those rights as found in Roberts' Dictionary of Industrial Relations, Fourth Edition, Bureau of National Affairs (1994). In a general and non-specific context, according to the testimony for Paradis, "reminder" sessions could and frequently did, transform themselves into formal discipline in the form of written verbal warnings or higher. (Finding Nos. 3 and 7) This expectation or anticipation, if not sufficient by itself to trigger an employee's expectation of formal discipline to follow, must be measured against the demeanor of the supervisor as he first sought and then addressed Sartell.

Our review of the testimony, as reflected in Finding Nos. 4, 5 and 7, is cause for concern about Webster's demeanor, first as to the "Get Charlotte in here" statement and second as to the "Get in here and close the door" and the "If you value your job, you'll close the door" statements. This leaves no doubt that Sartell logically, appropriately and reasonably might have assumed that her meeting with Webster would result in disciplinary action. It is the employee's expectations which control in such a case, not whether management asked any questions or imposed any discipline. We have already held that denial of an employee's "request for union representation...when discipline was *reasonably anticipated* constitutes an unfair labor practice..." (Emphasis added.) New Hampshire Troopers Association v. New Hampshire Department of Safety, Decision No.

1995-002 (March 20, 1995). When we look to the stated purposes of the Weingarten doctrine in the original case we find:

> "Requiring a lone employee to attend an investigatory interview which he reasonably believes may result in the imposition of discipline perpetuates the inequality the Act was intended to eliminate..."

N.L.R.B. v. Weingarten, 420 US 251, 262 (1975). The same principles apply to the circumstances of this case.

Under the circumstances of this case, we conclude that the Authority's denying a union representative under conditions which admittedly could lead to discipline constituted an unfair labor practice in violation of RSA 273-A:5 I (a) and (h), the latter as it applies to Article III, Section B.5 as it applies to "dignity and respect." The Authority is directed to CEASE and DESIST from denying union representation in such circumstances where it has been requested.

So ordered.

Signed this 15th day of June, 1999.

Bruce K. Johnson

BRUCE K. JOHNSON
Alternate Chairman

By unanimous vote. Alternate Chairman Bruce K. Johnson presiding. Members E. Vincent Hall and Seymour Osman present and voting.